



NEWS RELEASE

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INS Implements Section 245(i) Provision of the LIFE Act

LOS ANGELES – An interim rule for adjustment-of-status application procedures under Section 245(i) of the Immigration and Nationality Act (INA) will be published in the Federal Register on Monday, March 26. Adjustment of status under Section 245(i) is one of several immigration benefit provisions created by the Legal Immigration Family Equity Act and LIFE Act Amendments (LIFE Act) enacted on December 21, 2000.

“The LIFE Act provides relief for a number of individuals seeking to become lawful permanent residents, but it is not amnesty for all persons unlawfully in the United States,” said Thomas J. Schiltgen, Director of the INS Los Angeles District. “A major provision of the law is now in place, and we are moving as quickly as possible to develop regulations for all other LIFE benefits.”

Section 245(i) allows certain persons—who have an immigrant visa immediately available but entered without inspection or otherwise violated their status and thus are ineligible to apply for adjustment of status in the United States—to apply if they pay a \$1,000 penalty. The LIFE Act temporarily extends the ability to preserve eligibility for this provision of law until April 30, 2001. Use of Section 245(i) adjustment of status previously was limited to eligible individuals who were the beneficiary of a visa petition or labor certification application filed on or before January 14, 1998.

This is an important benefit for eligible individuals. Without Section 245(i), many individuals who entered illegally or violated their status are restricted from filing for adjustment in the United States and must obtain their immigrant visas overseas. However, their departure to obtain their immigrant visa abroad could trigger the three-year and 10-year bars to admission to the United States related to unlawful presence. Generally, the three-year bar applies to those who were unlawfully present in the United States for more than 180 days, and the 10-year bar applies to those who were unlawfully present in the United States for one year or more.

NOTE: There are some groups that may not be affected by any deadlines related to Section 245(i). The spouse or unmarried minor child of a U.S. citizen or the parent of a U.S. citizen child at least 21 years of age if he/she was inspected and lawfully admitted to the United States, but subsequently overstayed his/her authorized admission or worked without permission, **does not need to apply for adjustment of status under Section 245(i)**. Also, certain persons who are eligible for certain employment-based immigrant visas and who were inspected and lawfully admitted to the United States, but have not violated their status or worked without permission for more than 180 days, do not have to apply for adjustment of status under Section 245(i).

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The LIFE Act provides a very short window of opportunity, which ends April 30, 2001, for individuals to preserve their eligibility to file for adjustment of status under Section 245(i). **It is not necessary to apply for Section 245(i) adjustment of status on or before April 30, 2001**, but to preserve eligibility for Section 245(i) adjustment an individual must:

- Be the beneficiary of a **Form I-130** immigrant visa petition (“Petition for Alien Relative”), or **Form I-140** immigrant visa petition (“Immigrant Petition for Alien Worker”), or **Form I-360** [“Petition for an Amerasian Widow(er), or Special Immigrant], or **Form I-526** (“Petition for an Alien Entrepreneur”) **filed with the INS on or before April 30, 2001**, (either received by INS or, if mailed, postmarked on or before April 30, 2001) **or**
- Be the beneficiary of an application for labor certification filed with the Department of Labor (DOL) according to DOL rules on or before April 30, 2001, **and**
- If the qualifying visa petition or labor certification application was filed after January 14, 1998, have been physically present in the United States on December 21, 2000.

All petitions and applications must be properly filed and approvable when filed. Beneficiaries of immigrant visa petitions and labor certification applications that were filed by the cut-off date will be able to submit the application for adjustment of status (Form I-485) under Section 245(i) any time after an immigrant petition is approved and a visa number (priority date) is immediately available in accordance with the State Department’s monthly Visa Bulletin.

The LIFE Act also:

- Creates a new temporary “V” non-immigrant status to allow the spouses and minor children of lawful permanent residents—waiting more than three years for an immigrant visa based upon an immigrant petition filed on or before December 21, 2000—to be admitted to and work in the United States while they are waiting for a visa number (priority date) to be reached on the State Department’s visa waiting list.
- Expands the current K nonimmigrant status (which was only available to fiancées of U.S. citizens) to now include spouses and accompanying minor children of U.S. citizens to be admitted to the United States while their case is being processed.
- Provides adjustment of status for persons who filed before October 1, 2000, for class membership in one of three "amnesty" lawsuits (CSS v. Meese, LULAC v. INS, and Zambrano v. INS). Also provides family unity benefits, which may include employment authorization and protection from certain grounds of deportation, for certain spouses and children of applicants.
- Allows individuals, who previously could not have been eligible for relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA) because they were ordered deported/removed from the United States, to reopen their removal proceedings to apply for adjustment of status under NACARA or HRIFA on or before June 19, 2001.

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As LIFE Act regulations are finalized, INS will continue to update the public through the agency's Web site www.ins.usdoj.gov, toll-free customer telephone service 1-800-375-5283, and public outreach to the media and community-based organizations. Forms can be easily downloaded from the INS Web site www.ins.usdoj.gov, or requested by calling 1-800-375-5283.

“Immigration law is very complex. Those who have concerns about their eligibility for LIFE Act benefits should be cautious to avoid unscrupulous immigration practitioners. They should contact a licensed attorney or a legal service provider recognized by the Board of Immigration Appeals,” urged Schiltgen.

(A list of legal service providers recognized by the Board of Immigration Appeals is available on the Internet site www.usdoj.gov/eoir under “Pro Bono Program.”)

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